

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Phimpha Thepvongsa,

Plaintiffs,

v.

Regional Trustee Services Corporation;
Old Republic Title LTD.; Ocwen Loan
Servicing LLC, Saxon Mortgage
Services, Mortgage Electronic
Registration Systems, Inc.; New
Century Mortgage Corporation;
Deutsche Bank National Trust
Company; Morgan Stanley ABS Capital
I Inc.; and Does 1 through 20,

Defendants.

Case No. C10-1045RSL

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO FILE
SECOND AMENDED
COMPLAINT AND EXTENSION
OF TIME**

Noted for Consideration: March 11,
2011

1 **I. INTRODUCTION**

2 Defendants Ocwen Loan Servicing, LLC (“Ocwen”), Mortgage Electronic
3 Registration Systems, Inc. (“MERS”), and Deutsche Bank National Trust
4 Company as Trustee for the registered holders of Morgan Stanley ABS Capital I
5 Inc. Trust 2007-NC4 Mortgage Pass through certificates, Series 2007-NC4,
6 erroneously sued as Deutsche Bank National Trust Company (“Deutsche Bank, as
7 Trustee) (collectively “Defendants”) hereby oppose Plaintiff Pimpha
8 Thepvongsa’s (“Plaintiff”) Motion for Relief from Deadline to File Second
9 Amended Complaint and Extension of Time (“Motion”).

10 Plaintiff puts forth no good cause to grant an extension to the filing deadline
11 for his second amended complaint, which was February 25, 2011. *See* Court
12 Order, **Dkt. No. 32**, page 19. Plaintiff cites his miscalculation of the 30-day court-
13 ordered deadline as his excuse for his failure to comply with the Court Order.
14 Motion at page 1. Plaintiff’s failure to calendar his response time is clearly
15 inexcusable. The court order established, in no uncertain terms, the deadline of 30
16 days to file his amended complaint. It takes no more than a calendar to determine
17 the final deadline for filing his second amended complaint.

18 Moreover, one needs to look no further than Plaintiff’s behavior during his
19 30-day deadline to determine that this Motion is a dilatory tactic. With the 30
20 days that he had to file his second amended complaint, Plaintiff claims that he
21 “work[ed] hard” to complete his complaint and “actively [sought] [c]ounsel” to
22 represent him. Motion at page 1. Plaintiff has had at least eight months since the
23 filing of his suit to retain counsel and research his causes of action. Yet suddenly,
24 on the day of his deadline to file his second amended complaint, Plaintiff
25 conveniently states that he has found counsel to represent him. Motion at page 1.

1 Such excuses do not justify bringing this Motion. This is also Plaintiff's second
 2 amended complaint. He has had enough opportunities to research his claims and
 3 consult counsel. Plaintiff's request is a dilatory tactic to stall.

4 Additionally, any extension of time for Plaintiff to respond would cause
 5 undue prejudice to Defendants by preventing Defendants from complying with
 6 this Court's scheduling order and preparing for trial. Accordingly, Plaintiff's
 7 Motion should be denied.

8 **II. PLAINTIFF'S MOTION FAILS TO SET FORTH GOOD CAUSE** 9 **FOR AN EXTENSION**

10 Plaintiff fails to set forth any legal authority or good cause to warrant an
 11 extension of time. Plaintiff states that he miscalculated the 30-day deadline and
 12 further states that he used the 30-day court ordered deadline to file his second
 13 amended complaint to "work hard to complete" the complaint and to "actively
 14 seek[] [c]ounsel." Motion at page 1. Such grounds are not sufficient to constitute
 15 good cause.

16 In this Court's ruling on Defendants' Motion to Dismiss it states that
 17 "Plaintiff may amend his complaint with respect to claims that the Court has not
 18 dismissed with prejudice within thirty days of this Order." Court Order, **Dkt. No.**
 19 **32**, page 19. Plaintiff's behavior during his 30-day deadline is telling. "Working
 20 hard to complete" the complaint and "actively seeking [c]ounsel" are poor excuses
 21 for his non-compliance with a Court Order. *See* Motion at page 1. Plaintiff has
 22 had at least eight months since the filing of his suit to retain counsel, research his
 23 causes of action, and anticipate the filing of another complaint. Indeed, he had
 24 already requested a similar opportunity to file "a more definite statement" in his
 25 Response to Defendants' Motion to Dismiss, filed on September 24, 2010. *See*

1 Response, **Dkt. No. 29** at page 14. Additionally, this is his second amended
 2 complaint. Plaintiff has had enough opportunities to formulate his claims and
 3 consult counsel. Plaintiff has not established good cause for an extension.

4 Despite Plaintiff's pro per status, Plaintiff initiated this suit, prepared a
 5 motion for a temporary restraining order and permanent injunction (**Dkt. No. 4**),
 6 filed his complaint (**Dkt. No. 3**) and his first amended complaint (**Dkt. No. 7**), and
 7 served the summons and complaint on all defendants in this matter (**Dkt. Nos. 8-**
 8 **9**). It appears Plaintiff is determined to proceed with this matter without
 9 representation. Plaintiff has not established good cause to extend his time to file
 10 his second amended complaint.

11 **III. DEFENDANT WILL BE UNFAIRLY PREJUDICED BY A TIME** 12 **EXTENSION**

13 Defendant will be unfairly prejudiced by an extension of time for Plaintiff
 14 to respond to Defendants' Motion to Dismiss. This case is presently at issue and
 15 there are impending deadlines under this Court's scheduling order. On February
 16 3, 2011, this Court issued a scheduling order setting forth the following deadlines:
 17 F.R.C.P. 26(f) conference to be held by March 28, 2011, Initial Disclosures to be
 18 served by April 4, 2011, and a Combined Joint Status Report and Discovery Plan
 19 to be submitted no later than April 11, 2011. **Dkt. No. 33.**

20 Plaintiff's request for an extension of 10-14 "working days" to file a second
 21 amended complaint, if granted, would not afford Defendants a sufficient amount
 22 of time to comply with this Court's scheduling orders. *See* Motion at page 2.
 23 Furthermore, the lack of information would also prevent the parties from
 24 participating in any meaningful settlement conference and/or mediation, and
 25

1 ultimately prevent Defendants from adequately preparing for trial for the
2 remaining causes of action in this suit. Plaintiff's request must be denied.

3
4 Dated: March 3, 2011

HOUSER & ALLISON
A Professional Corporation

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6
7 /s/ Robert W. Norman, Jr.
8 ROBERT W. NORMAN, JR.
9 Attorney for Defendants
10 Ocwen Loan Servicing, LLC, Mortgage
11 Electronic Registration Systems, Inc., and
12 Deutsche Bank National Trust Company as
13 Trustee for the registered holders of Morgan
14 Stanley ABS Capital I Inc. Trust 2007-NC4
15 Mortgage Pass through certificates, Series
16 2007-NC4, erroneously sued as Deutsche
17 Bank National Trust Company
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DECLARATION OF SERVICE

The undersigned declares as follows:

On March 4, 2011, I served the foregoing document on the following individuals by mail:

Phimpa Thepvongsa
20044 139TH Way, SE
Kent, WA 98042
Plaintiff in pro se

/s/ Karen Delaney
Karen Delaney